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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA**

ELIZABETH BAKALAR,

Plaintiff,

v.

MICHAEL J. DUNLEAVY, in his individual
and official capacities; TUCKERMAN
BABCOCK; and the STATE OF ALASKA,

Defendants.

Case No. 3:19-CV-00025

**MOTION FOR NEW PRETRIAL ORDER
AND FOR LEAVE TO FILE FIRST
AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF**

Plaintiff Elizabeth Bakalar, by and through her counsel Choate Law Firm, LLC,
moves the court pursuant to FRCP 16(b)(4) for a new Pretrial Order and FRCP 15(a) for
leave to file her First Amended Complaint.

Procedural Background

This case was originally removed to Federal Court in February of 2019. (Dkt 1)
The defendants brought a request to stay discovery pending resolution of a qualified
immunity claim in June of 2019 (Dkt. 26) but never filed a motion regarding the
qualified immunity claim resulting in a denial of that motion on July 30, 2019.. (Dkt.

32) A Scheduling and Planning Order was entered on August 25, 2019 (Dkt 36). Subsequently, on September 16, 2019 defendants filed an Amended Answer. (Dkt. 39) A stipulated motion for protective order was filed in December 2019. (Dkt 41) The parties filed a joint motion for extension of time regarding various discovery deadlines on July 9, 2020. (Dkt. 43) On July 31, 2020, each party filed Witness Lists. (Dkts. 45 & 46) Discovery is set to close tomorrow, October 2, 2020. (Dkt. 44)

Factual Background

Plaintiff's new counsel believes that other than the exchange of some discovery, no appreciable legal work has occurred on this case since it was filed. No depositions have been noticed by either side. Other than the motion for stay filed in June 2019, the court file reflects no substantive legal work having been performed. It is believed these delays have been in part caused by COVID and in part by the fact there are multiple cases against the defendants for similar terminations and efforts to coordinate discovery between the cases has created delays. This is especially the case with election issues throughout the summer.

Law

Schedules may only be modified for good cause and by consent of the court. FRCP 16(b)(4) The Rule 16(b) "good cause" standard primarily considers the diligence of the party seeking the amendment." *Cook Inlet Energy, LLC v. Cudd Pressure Control, Inc.*, 3:13-cv-062 JWS (D. Alaska Jun. 4, 2015)

Once a pretrial order is in effect, moving to amend a complaint is not only subject to FRCP 15(a) but also FRCP 16(b)'s good cause standard. *Attorney's Liab. Prot. Soc'y, Inc., v. Ingaldson Fitzgerald, P.C.*, 3:11-cv-00187-SLG (D. Alaska Jun. 26, 2017)

Argument

Plaintiff's lawsuit was brought soon after she lost her employment with the State. Because of the political actors involved, multiple lawsuits and COVID, this case has just not been prosecuted as originally anticipated and planned.

Plaintiff believes that the defendants are willing to have a new scheduling order entered. The proposed First Amended Complaint brings only one new claim which arises from Constitutional Article XII, Section 6 which guarantees state employees merit principle protections in their employment. Those protections are implied in the original Complaint. The First Amended Complaint simply states the claim explicitly.

Other changes to the First Amended Complaint are minimal and chiefly focus on making it clear the breach of the covenant of good faith and fair dealing claim involves both the subjective and objective prongs of the covenant.

Conclusion

Plaintiff requests that the court order the parties to meet and confer to create a new pretrial schedule and to order the filing of the attached First Amended Complaint.

Dated: October 1, 2020

By: /s/ Mark Choate
Mark C. Choate, AK #8011070
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing
was sent to counsel of record on October 1, 2020

via ☐ US Mail ☐ Fax ☒ Email

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/s/ Mark Choate

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